

R E C E I V E D
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

12-35082

FEB 06 2012

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED _____
DOCKETED _____
DATE _____
INITIAL _____

David Stebbins
Appellant,

9th Cir. Case No. 12-35083

Originating Court Case No. 11-1362

vs.

Microsoft, Inc.
Appellee(s).

APPELLANT'S INFORMAL BRIEF

(attach additional sheets as necessary)

1. Jurisdiction

a. Timeliness of Appeal:

(i) Date of entry of judgment or order
of originating court: Jan. 13, 2012

(ii) Date of service of any motion made after judgment (other than
for fees and costs): Jan. 20, 2012

(iii) Date of entry of order deciding motion: n/a

(iv) Date notice of appeal filed: Jan. 20, 2012

(v) For prisoners, date you gave notice of appeal to prison
authorities: Jan. 20, 2012

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2. What are the facts of your case?

In May of 2012, I submitted a notice to appellee attempting to unilaterally amend the terms of my Xbox Live contract, in much the same way as appellee often does. These terms included, among other things, an arbitration agreement an "forfeit victory clause," which says that I automatically win any arbitration, without even having to go to arbitration, if they do not accept the arbitration invitation within 24 hours of receiving it.

After the deadline for Appellee to cancel the Xbox Live account passed, I sent Appellee two arbitrations for amounts totaling \$6,500,000,000, and Appellee ignored them both.

I waited three months before moving to confirm the awards. Appellees responded claiming that the unilateral amendments do not work when consumers do them. I filed a motion for judgment on the pleadings citing binding precedent that Defendant was time-barred from challenging the arbitration awards on any grounds, even the non-existence of an arbitration agreement!

The District Court, however, simply ignored the time-barred argument and proceeded to dismiss the reasons Defendant advocated, all without citing any legal authorities to back up their claim!

This notice of appeal ensues.

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3. What did you ask the originating court to do (for example, award damages, give injunctive relief, etc.)?

I asked the originating court to confirm the arbitration awards, effectively awarding damages totaling \$1,500,000,000.

4. State the claim or claims you raised at the originating court.

2. Defendants are time-barred.
2. There is no motion to vacate.
3. There is indeed an arbitration agreement
4. Defendant, not Plaintiff, holds the burden of proof.
5. The arbitrator, ~~not~~ not the Court, decides the forfeit victory clause.
6. In case I missed any, ~~please~~ refer to the district court papers for all the issues raised.

5. What issues are you raising on appeal? What do you think the originating

court did wrong? I raise on appeal all the issues raised in the originating court. The originating court did wrong for all the reasons listed in the Second Motion for Judgment on the pleadings (hereby incorporated by reference), which the originating court conveniently ignored.

If anything, the verdict should be overturned simply because it violates binding precedent. Then, Defendant can file an appeal, arguing why the precedent should be overturned; but that is a different case for a different day.

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6. Did you present all issues listed in #5 to the originating court?

Yes If not, why not?
Yes/No

7. What law supports these issues on appeal?

(You may, but need not, refer to cases and statutes.)

I do not remember most of the legal authorities I cited, due to my newfound incarceration. Therefore, I humbly ask the court to check the Pacer files in the originating court.

One case law I do remember is the WA Court of Appeals case of MBNA America Bank v. Miles, which binds the federal courts by way of the Erie Doctrine, and unequivocally states that the Defendants should have been unequivocally time-barred from their defense.

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8. Do you have any other cases pending in this court?

If so, give the name and docket number of each case.

I have no other pending cases in this court.

9. Have you filed any previous cases which have been decided by this court?

If so, give the name and docket number of each case.

I previously filed a petition for writ ~~or~~ of mandamus in this court. I humbly do not remember the case number, but hopefully, it should not be too hard for the court to look up, as the Court is not incarcerated.

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

David Stebbins
Name
5800 Law Dr.
Harrison, AR 72601

Address

Jan. 30, 2012
Date

David Stebbins
Signature

CERTIFICATE OF SERVICE

Case Name: _____ v. _____

9th Cir. Case No.: _____

IMPORTANT: You must send a copy of ALL documents filed with the Court and any attachments to counsel for ALL parties in this case. You must attach a copy of the certificate of service to each of the copies and the original you file with the Court. Please fill in the title of the document you are filing. Please list the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below.

I certify that a copy of the _____
(title of document you are filing)
and any attachments was served, either in person or by mail, on the persons listed below.

Signature
Notary NOT required

Name

Address

Date Served